

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 221 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

MANORAMA SARABHAI TRUST NO.4

Appearance:

Mr. Pranav G Desai for MR MANISH R BHATT for Petitioner
D.A.Mehta & R K Patel for respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 02/02/98

ORAL JUDGEMENT

The Income-Tax Appellate Tribunal, Ahmedabad has referred the following two questions, the first being at the instance of Revenue and the second at the instance of the assessee for the opinion of this Court under the provisions of Section 256(1) of the

Income Tax Act, 1961.

At the instance of Revenue:-

"Whether the Appellate Tribunal is right in law and on facts in holding that when the assessee received shares, debentures and bonds of amalgamated companies, there was no transfer under section 2(47) of the Income-Tax Act and consequently no capital gains tax could be charged ? "

At the instance of the assessee:

Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the assessee was not entitled to exemption under section 47(vii) of the Income-Tax Act, 1961 ? "

2. The assessee held shares in certain amalgamating company. The amalgamation took place as per the order of the High Court, as per which the assessee received shares and bonds of amalgamated company in lieu of the shares of amalgamating company. The ITO held that the transaction of receipt of shares and bonds of the amalgamated company amounted to transfer under section 2(47) of the Act and therefore, the provisions of capital gains were attracted. The assessee preferred an appeal before AAC contending that the transaction in question did not amount to transfer within the meaning of section 2(47) of the Act and as such no taxable capital gain arose and further that the capital gains, if any, were exempt under section 47 (vii) of the Act. The AAC relying on an earlier decision of the Tribunal held that capital gains if any, were exempt under section 47(vii) of the Act. In appeal before the Tribunal against that order, by the Revenue, the Tribunal while holding that the question whether capital gains, if any, were exempt under section 47(vii) of the Act was already decided against the assessee by the Gujarat High Court in the case of Gautam Sarabhai Trust No. 31 reported in 173 ITR, 216, found that no capital gains were liable to be taxed in view of the fact that the transaction in question did not amount to transfer under Section 2(47) of the Act.

3. A similar question had arisen in CIT vs. Leena Sarabhai reported in 221 ITR, 520 in a case of an assessee belonging to the same group, and it was held that the question whether, on amalgamation of a company

when assessee receives shares and bonds of the amalgamated company in lieu of the assessee's share holding in the amalgamating company it is a transfer as contemplated under section 2(47) of the Act, was not required to be determined mainly because it appeared from the letter of Commissioner of Income-tax referred to in the judgment that the department in similar cases belonging to the same group had accepted that where assessees have received shares and bonds because of amalgamation, there is no transfer of capital assets within the meaning of section 2(47) of the Act. Since the department had accepted the position that there was no transfer in such cases, the High Court left the question unanswered. Since in the present case, same stand is taken by the Revenue, through their learned counsel, it would in our view amount to not pressing for the reference of the question which has been referred at the instance of the Revenue. The question which is referred at the instance of Revenue is therefore not answered.

4. The question which is referred at the instance of the assessee is, as stated by the learned counsel for the assessee squarely covered by the decision of this Court in CIT Vs Gautam Sarabhai Trust reported in 173 ITR, 216. That was also a case of an assessee belonging to the same group of assessee. In that case, it was held that if, besides a share or shares in the amalgamated company, the share holder of the amalgamating company is allotted something more, such as bonds or debentures, in consideration of transfer of his share or shares in the amalgamating company, he cannot get the benefit of section 47 (vii) of the Act. We therefore, hold that the Tribunal was right in holding that the assessee was not entitled to exemption under section 47 (vii) of the Act, and answer the question referred to us at the instance of the assessee against the assessee and in favour of the Revenue. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani,J)

(Kundan Singh,J)

***darji